

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

ROBERT CHARLES JONES,)	
)	
Petitioner,)	
)	
)	CIV-12-1387-M
v.)	
)	
JOSEPH L. TAYLOR, Warden,)	
)	
Respondent.)	

SUPPLEMENTAL REPORT AND RECOMMENDATION

In this action, Petitioner has filed a 17-page initial pleading in this case labeled “Motion for Relief.” (Doc. # 1). In his pleading, Petitioner states that he is seeking “relief from judgment dated December 7, 2011, pursuant to Rule 60(b)” The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

Taking judicial notice of the Court’s records, Petitioner previously filed a 28 U.S.C. § 2254 petition for a writ of habeas corpus in Jones v. Taylor, Case No. CIV-11-894-W. In that proceeding, District Judge West entered an order and judgment on December 7, 2011, dismissing the Petition with prejudice on the ground that it was not timely filed consistent with 28 U.S.C. § 2244(d)(1).

Nowhere in his 17-page initial pleading filed herein does Petitioner identify the

previous habeas proceeding or specifically state that he is intending to seek relief from the decision entered in the previous habeas proceeding. Nor has Petitioner included a copy of the decision entered in Case No. CIV-11-894-W. However, upon review of the “Motion for Relief,” it is clear that Petitioner’s “Motion for Relief” should be construed as a motion pursuant to Fed. R. Civ. P. 60 seeking relief from the judgment and order entered in his previous § 2254 proceeding. As the “Motion for Relief” was filed only six days after the order and judgment were entered in the previous action, the Rule 60 motion is timely filed. Fed. R. Civ. P. 60(c)(1).

Accordingly, the **Clerk of the Court is directed** to file a copy of the “Motion for Relief” (Doc. # 1) in Jones v. Taylor, Case No. CIV-11-894-W, and the instant action should be dismissed without prejudice to the filing of a copy of the “Motion for Relief” in Petitioner’s previous habeas action, Jones v. Taylor, Case No. CIV-11-894-W.

RECOMMENDATION

Based on the foregoing findings, it is recommended that the action be dismissed without prejudice to the filing of a copy of the “Motion for Relief” in Petitioner’s previous habeas proceeding, Jones v. Taylor, Case No. CIV-11-894-W. Petitioner is advised of his right to file an objection to this Supplemental Report and Recommendation with the Clerk of this Court by February 4th, 2013, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The failure to timely object to this Supplemental Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States of America, 950

F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996)(“Issues raised for the first time in objections to the magistrate judge’s recommendations are deemed waived.”).

This Supplemental Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 14th day of January, 2013.



GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE